

FILED & ENTERED

MAR 28 2023

**CLERK U.S. BANKRUPTCY COURT
Central District of California
BY fortier DEPUTY CLERK**

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:
9017 CR DR, LLC,
Debtor.

) Case No.: 2:22-bk-16626-BR
)
Chapter 7
)
FINDINGS OF FACT AND
CONCLUSIONS OF LAW PURSUANT TO
THE SHOW CAUSE HEARING WHY: (1)
THIS CASE SHOULD NOT BE
DISMISSED AS AN ABUSIVE FILING; (2)
BENJAMIN S. NACHIMSON SHOULD
NOT BE SANCTIONED UNDER RULE
9011 FOR THE BAD FAITH FILING; (3)
BENJAMIN S. NACHIMSON SHOULD
NOT BE FOUND IN CONTEMPT; AND (4)
BENJAMIN S. NACHIMSON SHOULD
NOT BE REFERRED TO THE
BANKRUPTCY COURT'S DISCIPLINARY
PANEL
)
DATE: February 21, 2023
TIME: 10:00 am
PLACE: Courtroom 1668
255 East Temple Street
Los Angeles, CA 90012

22 This matter is before the Court on its “Order Directing Benjamin S. Nachimson to
23 Personally Appear and Show Cause Why: (1) This Case Should Not be Dismissed as an
24 Abusive Filing; (2) Benjamin S. Nachimson Should Not Be Sanctioned Under Rule 9011
25 for Bad Faith Filing; (3) Benjamin S. Nachimson Should Not Be Found in Civil Contempt;
26 and (4) Benjamin S. Nachimson Should Not Be Referred to the Bankruptcy Court’s
27 Disciplinary Panel for His Conduct in Filing Debtor’s Cases” entered on December 28,
28 2022 (Docket No. 28). On February 21, 2023, the Court held a hearing related to its order.

1 The order directed Mr. Nachimson to personally appear at the February 21, 2023 hearing
2 and file a response to the order by February 7, 2023. Appearances at the hearing were as
3 follows: Benjamin S. Nachimson appeared on his own behalf; Ron Maroko appeared on
4 behalf of the United States Trustee.

5 Pursuant to its February 21, 2023 hearing, the Court makes the following findings of
6 fact and conclusions of law as to why: (1) this case should not be dismissed as an abusive
7 filing; (2) Benjamin S. Nachimson should not be sanctioned under Federal Rule of
8 Bankruptcy Procedure Rule 9011 for the bad faith filing; (3) Benjamin S. Nachimson
9 should not be found in contempt; and (4) Benjamin S. Nachimson should not be referred to
10 the Bankruptcy Court's Disciplinary Panel.

11 **FINDINGS OF FACT**

12 1. Mr. Nachimson did not file a response by February 7, 2023 as directed by
13 the order (Docket No. 28).

14 2. Mr. Nachimson is an attorney licensed to practice law in the State of
15 California under the bar number 166690.

16 3. Debtor, 9017 CR DR, LLC, was organized on September 13, 2019. Mr.
17 Nachimson is listed as the Manager of the debtor according to Statement of Information
18 filed with the California Secretary of State on September 20, 2019.

19 4. Debtor has an interest in real property identified as 9017 Cresta Drive, Los
20 Angeles, CA, 90035 ("Cresta Property"), which it acquired via quitclaim deed on November
21 22, 2019. The quitclaim deed recites that Benjamin Nachimson and Susan Nachimson,
22 husband and wife as joint tenants, grant the debtor, 9017 CR DR, LLC, all of their rights,
23 title, and interest in the real property. Mot. for Relief from the Automatic Stay, Ex. 4, 2:20-
24 bk-10619-RK, ECF 7. Susan Nachimson acquired the property on June 29, 2007. Mot. for
25 Relief from the Automatic Stay, Ex. 1, 2:20-bk-10619-RK, ECF 7.

26 5. The Cresta Property is the personal residence of Mr. Nachimson and his
27 spouse Susan Rachel Nachimson.

1 6. On December 5, 2022, the debtor filed a chapter 7 bankruptcy petition, which
2 was assigned Case No. 2:22-bk-16626-BR. Mr. Nachimson signed the petition on behalf
3 of the debtor as the representative authorized to request bankruptcy relief with the title
4 "Managing Member." Bankr. Pet., 4, 2:22-bk-16626-BR. ECF No. 1.

5 7. Mr. Nachimson also signed the petition as debtor's counsel. Bankr. Pet., 5,
6 2:22-bk-16626-BR, ECF 1.

7 8. The petition filed on December 5, 2022 is the sixth petition that debtor has
8 filed with Mr. Nachimson as signatory since the debtor was organized in 2019. These
9 cases are:

Debtor Name	Date Filed	Case No.	Disposition
9017 CR DR, LLC	November 24, 2019	2:19-bk-23822-ER	Dismissed on December 19, 2019.
9017 CR DR, LLC	December 23, 2019	2:19-bk-24932-RK	Dismissed on January 14, 2020.
9017 CR DR, LLC	January 21, 2020	2:20-bk-10619-RK	Dismissed on March 5, 2020.
9017 CR DR, LLC	September 30, 2021	2:21-bk-17007-BR	Dismissed on October 13, 2021.
9017 CR DR, LLC	October 30, 2022	2:22-bk-15944-BR	Dismissed on November 22, 2022.
9017 CR DR, LLC	December 5, 2022	2:22-bk-16626-BR (the current case)	Dismissed on December 22, 2022 permanently barring the debtor from filing any subsequent bankruptcies.

22 9. Before the debtor was even formed or title to the Cresta Property was
23 transferred to the debtor, Mr. Nachimson and his spouse Susan Rachel Nachimson filed
24 four additional bankruptcy petitions involving the Cresta Property. These cases are:
25
26 ///
27 ///
28 ///

Debtor Name	Date Filed	Case No.	Disposition
Benjamin Nachimson	May 17, 2019	2:19-bk-15743-WB	Dismissed on June 11, 2019.
Benjamin Nachimson	June 21, 2019	2:19-bk-17227-NB	Dismissed on September 3, 2019.
Susan Rachel Nachimson	July 23, 2019	2:19-bk-18524-SK	Dismissed on August 15, 2019.
Susan Rachel Nachimson	August 20, 2019	2:19-bk-19739-SK	Dismissed on November 19, 2019 with a 180-day bar against refiling.

The Previous Petitions Were Abusive Filings

10. Case No. 2:19-bk-15743-WB (“first bankruptcy”) filed on May 7, 2019 was a chapter 13 case filed by Mr. Nachimson. Bankr. Pet., at 1, 6, 2:19-bk-15743-WB, ECF 1. An order dismissing the bankruptcy for failure to file the required statements and schedules was entered on June 4, 2019. Ord. and Notice of Dismissal, 2:19-bk-15743-WB, ECF 9.

11. Case No. 2:19-bk-17227-NB (“second bankruptcy”) filed on June 6, 2021 was also a chapter 13 case filed by Mr. Nachimson. Bankr. Pet., at 1, 6, 2:19-bk-17227-NB, ECF 1. An order dismissing the bankruptcy for failure to file the required statements and schedules was entered on July 9, 2019. Ord. and Notice of Dismissal, 2:19-bk-17227-NB, ECF 11.

12. Question nine of the petition form asks debtors if they have filed for bankruptcy within the last eight years. In response to question nine, Mr. Nachimson checked the box for “no.” Bankr. Pet., at 3, 2:19-bk-17227-NB, ECF 1. Considering that the second bankruptcy was filed a mere two days after the order dismissing the first bankruptcy was entered, it is obvious that Mr. Nachimson made a false statement when answering question nine. As signatory on both the first bankruptcy petition and the second bankruptcy petition, Mr. Nachimson had knowledge of the first bankruptcy petition.

1 13. Case No. 2:19-bk-18524-SK (“third bankruptcy”) was a chapter 13 case filed
2 on July 23, 2019 by Susan Rachel Nachimson. Bankr. Pet., at 6, 2:19-bk-18524-SK, ECF
3 1. Mr. Nachimson also signed the petition as Ms. Nachimson’s attorney. Bankr. Pet., at 7,
4 2:19-bk-18524-SK, ECF 1. An order dismissing the bankruptcy for failure to file the
5 required statements and schedules was entered on August 12, 2019. Ord. and Notice of
6 Dismissal, 2:19-bk-18524-SK, ECF 11.

7 14. Case No. 2:19-bk-19739-SK (“fourth bankruptcy”) was a chapter 13 case
8 filed on August 20, 2019 by Susan Rachel Nachimson, again with Mr. Nachimson signing
9 as Ms. Nachimson’s attorney. Bankr. Pet., at 6, 7 2:19-bk-19739-SK, ECF 1.

10 15. The signature pages on the fourth bankruptcy petition are dated July 23,
11 2019, which is the same date the third bankruptcy was filed. This indicates to the Court
12 that at the very least, the signature pages, if not the petitions themselves, were re-used
13 between the third and fourth bankruptcies.

14 16. On the petition for the fourth bankruptcy, Ms. Nachimson indicated that she
15 had not filed for bankruptcy within the past eight years. Bankr. Pet., at 3, 2:19-bk-19739-
16 SK, ECF 1. The third bankruptcy was filed by Ms. Nachimson less than a month before the
17 fourth bankruptcy was filed. Ms. Nachimson’s response to question nine of the bankruptcy
18 petition was false, and this false statement was ratified by Mr. Nachimson as her attorney.
19 Later, on September 3, 2019, Ms. Nachimson filed a statement of related cases which
20 included the case number of the third bankruptcy. Statement of Related Cases, 2:19-bk-
21 19739-SK, ECF 9.

22 17. On November 13, 2019, Judge Klein entered her “Order and Notice of
23 Dismissal Arising From Chapter 13 Confirmation Hearing [11 U.S.C. § 109(g)]” dismissing
24 the bankruptcy and barring Susan Rachel Nachimson from filing any new bankruptcy
25 petition within 180 days of the order. Ord. and Notice of Dismissal, 2:19-bk-19739-SK,
26 ECF 16.

27 18. Undaunted by the 180-day bar against filing, Mr. Nachimson formed the
28 debtor, transferred the title of the Cresta Property to the debtor, and continued to file

1 bankruptcy petitions involving the Cresta Property.

2 19. Case No. 2:19-23822-ER (“fifth bankruptcy”) was a chapter 7 case filed on
3 November 24, 2019 by the debtor. Bankr. Pet., at 1, 2:19-23822-ER, ECF 1. Mr.
4 Nachimson signed the petition as both the representative of the debtor, listing his title as
5 “Member” and as the debtor’s attorney. Bankr. Pet., at 4, 2:19-23822-ER, ECF 1. An order
6 dismissing the bankruptcy for failure to file the required statements and schedules was
7 entered on December 19, 2019. Ord. and Notice of Dismissal, 2:19-23822-ER, ECF 9.

8 20. On December 23, 2019, a mere four days after the fifth bankruptcy was
9 dismissed, debtor filed another chapter 7 case which was given the number 2:19-bk-
10 24932-RK (“sixth bankruptcy”). Bankr. Pet., at 1, 2:19-bk-24932-RK, ECF 1. Again, Mr.
11 Nachimson signed the petition as the debtor’s representative listing his title as “Member”
12 and also signed the petition as the debtor’s attorney. Bankr. Pet., at 4, 2:19-bk-24932-RK,
13 ECF 1. Mr. Nachimson listed the fifth bankruptcy as a prior bankruptcy case on the
14 petition. Bankr. Pet., at 2, 2:19-bk-24932-RK, ECF 1. An order dismissing the bankruptcy
15 for failure to file the required statements and schedules was entered on January 10, 2020.
16 Ord. and Notice of Dismissal, 2:19-bk-24932-RK, ECF 7.

17 21. Case No. 2:20-bk-10619-RK (“seventh bankruptcy”) was a chapter 7 case
18 filed on January 21, 2020 by the debtor with Mr. Nachimson signing as the debtor’s
19 representative as “Member” and also signing as the debtor’s attorney. Bankr. Pet., at 4,
20 2:20-bk-10619-RK, ECF 1. In response the question of whether prior bankruptcies were
21 filed by the debtor within the past eight years, Mr. Nachimson listed the fifth bankruptcy,
22 but gave no indication of the sixth. Bankr. Pet., at 2, 2:20-bk-10619-RK, ECF 1. An order
23 dismissing the seventh bankruptcy for failure to file the required statements and schedules
24 was entered on February 6, 2020. Ord. and Notice of Dismissal, 2:20-bk-10619-RK, ECF
25 10.

26 22. In the previous bankruptcies, creditors of the Cresta Property had filed relief
27 from stay motions to no avail as the debtor was dismissed before the motion could be
28 heard and relief could be granted. In the seventh bankruptcy, creditors requested in rem

1 relief and annulment of the automatic stay. Notice of Intent to Proceed with in Rem Mot.
2 for Relief and Req. for Annulment, at 2, 2:20-bk-10619-RK, ECF 12. Judge Kwan granted
3 the motion in part finding that the filing of the bankruptcy petition violated 11 U.S.C. §
4 362(d)(4) and was “part of a scheme to hinder, delay, or defraud creditors.” Ord. Granting
5 Mot. for Relief from the Automatic Stay, at 2, 2:20-bk-10619-RK, ECF 17. Judge Kwan
6 specifically found that the debtor was involved in the scheme which included transferring
7 the property to the debtor without the consent of the secured creditor or the court and filing
8 multiple bankruptcy cases affecting the Cresta Property. Ord. Granting Mot. for Relief from
9 the Automatic Stay, at 2, 2:20-bk-10619-RK, ECF 17. The order stated that the automatic
10 stay was terminated as to the debtor and the debtor’s estate, and that no further automatic
11 stay shall arise as to the property, or any bankruptcy case commenced by or against the
12 debtor for 180 days. Ord. Granting Mot. for Relief from the Automatic Stay, at 2, 3, 2:20-
13 bk-10619-RK, ECF 17.

14 23. Despite being found to be part of a scheme to hinder or delay creditors in
15 violation of 11 U.S.C. § 362(d)(4) in the seventh bankruptcy, Case No. 2:21-bk-17007-BR
16 (“eighth bankruptcy”) was filed by the debtor on September 3, 2021. Bankr. Pet., at 1,
17 2:21-bk-17007-BR, ECF 1. The eighth bankruptcy was a chapter 7 case and Mr.
18 Nachimson signed as the debtor’s representative listing his title as “Managing Member”
19 and also signed the petition as the debtor’s attorney. Bankr. Pet., at 4-5, 2:21-bk-17007-
20 BR, ECF 1. Mr. Nachimson indicated only one prior bankruptcy on the petition, the
21 seventh bankruptcy. Bankr. Pet., at 3, 2:21-bk-17007-BR, ECF 1.

22 24. After initially dismissing the eighth bankruptcy case for failure to file the
23 required statements and schedules, the dismissal was vacated in September 2021. 2:21-
24 bk-17007-BR, ECF 14, 15. Creditors had again moved for a relief from stay which was
25 granted. 2:21-bk-17007-BR, ECF 10, 21. In its order granting relief from stay, this Court
26 also found that debtor violated 11 U.S.C. § 362(d)(4) by filing a petition that was part of
27 scheme to hinder, delay, or defraud creditors, and that the scheme involved the debtor.
28 Ord. Granting Mot. for Relief from the Automatic Stay, at 2, 2:21-bk-17007-BR, ECF 21.

1 The order provided that the automatic stay would not arise as to the property in any case
2 commenced by or against the debtor, or any debtor who claimed any interest in the
3 property for 180 days. Ord. Granting Mot. for Relief from the Automatic Stay, at 3, 2:21-bk-
4 17007-BR, ECF 21.

5 25. Amazingly, debtor filed another chapter 7 petition on October 30, 2022 which
6 was assigned Case No. 2:22-bk-15944-BR ("ninth bankruptcy"). Mr. Nachimson signed
7 this bankruptcy as debtor's representative, stating his title was "Managing Member" and
8 again signed the petition as attorney for the debtor. Bankr. Pet., at 4, 2:22-bk-15944-BR,
9 ECF 1.

10 26. In the ninth bankruptcy, Mr. Nachimson answered "yes" as to whether the
11 debtor had filed bankruptcy in the previous eight years but did not list any corresponding
12 case numbers. Bankr. Pet., at 3, 2:22-bk-15944-BR, ECF 1.

13 27. An order dismissing the ninth bankruptcy for failure to file the required
14 statements and schedules was entered on November 21, 2022. Ord. and Notice of
15 Dismissal, 2:22-bk-15944-BR, ECF 6.

16 *The Current Bankruptcy Petition is an Abusive Filing*

17 28. Two weeks after the ninth bankruptcy was dismissed, on December 5, 2022,
18 debtor filed the current bankruptcy ("tenth bankruptcy"), which was given the Case No.
19 2:22-bk-16626-BR. Like the other petitions filed by debtor, this bankruptcy was a chapter
20 7. Bankr. Pet., at 2, 2:22-bk-16626-BR, ECF 1. Mr. Nachimson signed the petition as
21 representative of the debtor, listing his title as "Manager" and then signed again as
22 debtor's counsel. Bankr. Pet., at 4-5, 2:22-bk-16626-BR, ECF 1. This petition, like the
23 others, was missing the required statements, schedules, and declarations. Bankr. Pet.,
24 2:22-bk-16626-BR, ECF 1-1.

25 29. On December 19, 2022 the United States Trustee filed an "Application for
26 Issuance of an Order Directing Benjamin S. Nachimson in His Capacities as Manager of
27 Debtor and Attorney for Debtor to: Personally Appear and Show Cause Why: (1) This
28 Case Should Not Be Dismissed as an Abusive Filing; (2) Benjamin S. Nachimson Should

1 Not be Sanctioned Under Rule 9011 for the Bad Faith Filing; (3) Benjamin S. Nachimson
2 Should Not Be Found in Contempt; and (4) Benjamin S. Nachimson Should Not Be
3 Referred to the Bankruptcy Court's Disciplinary Panel for His Conduct in Filing Debtor's
4 Cases." UST Appl. for Issuance of an Ord., 2:22-bk-16626-BR, ECF 14. This pleading
5 outlined the multiple bankruptcies described above.

6 30. In response to the United States Trustee's application for order, Mr.
7 Nachimson filed an *ex parte* application. Ex Parte Application Re: Dismissal of Case, 2:22-
8 bk-16626-BR, ECF 18. Mr. Nachimson admitted that the purpose of the current bankruptcy
9 petition was to allow time for the debtor to obtain a loan to refinance the Cresta Property.
10 Ex Parte Application Re: Dismissal of Case, 1:26-28, 2:22-bk-16626-BR ECF 18.

11 31. On December 22, 2022, this Court entered an order dismissing the case,
12 retaining jurisdiction over all issues involving sanctions and barring the debtor permanently
13 from filing any subsequent bankruptcies. Ord. Granting Ex Parte Application Re: Dismissal
14 of Case, at 2:6-10, 2:22-bk-16626-BR, ECF 18.

15 32. To the extent any of the above findings of fact contain conclusions of law,
16 they shall be deemed to be conclusions of law; to the extent that any of the following
17 conclusions of law contain findings of fact, they shall be deemed to be findings of fact.

Conclusions of Law

Mr. Nachimson Violated Federal Rule of Bankruptcy Procedure 9011

20 33. Rule 9011 is violated when a petition is presented for an improper purpose,
21 “such as to harass or cause unnecessary delay or needless increase in the cost of
22 litigation.” FED. R. BANKR. P. 9011(b)(1). “If a court finds that a motion or paper, other than
23 a complaint, is filed in the context of a persistent pattern of clearly abusive litigation
24 activity, it will be deemed to have been filed for an improper purpose and sanctionable.”
25 *Aetna Life Ins. Co. v. Alla Med. Servs. Inc.*, 855 F.2d 1470, 1476 (9th Cir. 1988). Here,
26 there is a persistent pattern of abusive filings.

27 34. As detailed above, Mr. Nachimson has caused the debtor to file multiple
28 bankruptcy petitions since 2019. Prior to the debtor's filings, Mr. Nachimson and his

1 spouse, Susan Rachel Nachimson, filed four bankruptcy petitions. In all of these cases,
2 the petitions did not include the required schedules and statements.

3 35. Based on a review of all of these petitions and their missing documents, as
4 well as Mr. Nachimson's own admission in his *ex parte* application in the current
5 bankruptcy that the petition was filed to allow time to refinance the Cresta Property, the
6 Court concludes that the debtor's bankruptcies, as well as those filed by Mr. Nachimson
7 personally and those filed by Susan Rachel Nachimson were part of a scheme hinder or
8 delay creditors. Mr. Nachimson devised that scheme.

9 36. Mr. Nachimson signed and filed the current petition for an improper purpose.

10 37. Mr. Nachimson improperly used the bankruptcy process so that he could
11 personally obtain the benefits of the automatic stay.

12 38. Mr. Nachimson failed to disclose prior bankruptcies on the debtor's current
13 petition.

14 39. For his violation of Rule 9011, referral to the Bankruptcy Court's Disciplinary
15 Panel is a sufficient sanction.

Contempt and Disciplinary Proceedings

17 40. While Mr. Nachimson's behavior over the course of these petitions is
18 egregious, the Court does not conclude he should be held in civil contempt.

19 41. For all the reasons stated above, this Court will be referring Mr. Nachimson
20 to the Bankruptcy Court's Disciplinary Panel.

Date: March 28, 2023

Barry Russell

Barry Russell
United States Bankruptcy Judge